

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO,  
EASTERN DIVISION AT YOUNGSTOWN**

BRUCE KECK,

*Plaintiff,*

v.

NEW DAY ENTERPRISES, INC., *et al.*,

*Defendants.*

: Case No. 4:13-cv-00185-BYP  
:  
: JUDGE BENITA Y. PEARSON  
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:  
: **ORDER**  
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This action is before the Court upon Plaintiff, Bruce Keck's, Motion for Default Judgment on his Second Amended Complaint against Defendant, Outland Sports, Inc., which he filed on August 19, 2013. (ECF No. 37). Outland Sports, Inc., did not file an answer or otherwise defend and the deadline for doing so has expired.

Plaintiff did not have a duty to serve Defendant, Outland Sports, Inc., with the Second Amended Complaint (ECF No. 37). Fed. R. Civ. P. 5(a)(2) states that

*If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

As the Sixth Circuit has remarked, "[o]nce a defendant fails to file a responsive answer, he is in default. . . ." *Shepard Claims Service, Inc. v. William Darrah & Assoc.*, 796 F.2d 190, 194 (6th Cir. 1986) (emphasis in original) (citation omitted). Here, Plaintiff's Second Amended Complaint (ECF No. 37) did not assert any new claims against Defendant, Outland Sports, Inc., but rather was filed for the sole purpose of adding Kinsey's Archery Products, Inc. as a new party defendant to this action. *See* ECF No. 35 at PageID #: 206.

Therefore, for good cause shown, Plaintiff's motion for default judgment against Defendant, Outland Sports, Inc. is granted.

IT IS SO ORDERED.

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Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge